

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CATINA WILSON

Claimant

VS.

PRESBYTERIAN MANORS, INC.

Self-Insured Respondent

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Docket No. 1,009,400

ORDER

Respondent requests review of the September 26, 2003 preliminary hearing Order entered by Administrative Law Judge (ALJ) Robert H. Foerschler.

ISSUES

The ALJ found claimant sustained a compensable shoulder injury while moving a resident and was therefore entitled to an evaluation and treatment, if medically necessary. The respondent requests review of this determination alleging the claimant failed to establish the necessary elements of her claim. Specifically, respondent argues that claimant failed to prove she suffered an accidental injury that arose out of and in the course of her employment. Respondent also argues that claimant failed to sufficiently provide specific notice of her accident nor did she do so in a timely manner as required by K.S.A. 44-520 (Furse 2000).

Claimant argues she has satisfied her evidentiary burden and as a result, the ALJ's Order should be affirmed in all respects.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Appeals Board (Board) makes the following findings of fact and conclusions of law:

Claimant was employed as a certified nurse aid (CNA) and her duties included routinely assisting residents with the activities of daily living, including moving and lifting the residents in and out of bed. On January 30, 2003, claimant was scheduled to work

from 2 p.m. to 10 p.m. Between 4 and 5 p.m., claimant was in the process of assisting various residents. This would be the last period of time during her shift that day that she was required to lift or move any of the residents assigned to her. Claimant completed her shift and went home as scheduled.

The next day, Friday, January 31, 2003, she was not scheduled to work. When she awakened that day, she noticed her left shoulder was painful. The pain continued throughout the day. Other than her regular work duties the day before, she denies any injury to her shoulder in any way while at home the evening before or during the night.

Claimant reported to work on Saturday, February 1, 2003, at 2 p.m. as scheduled. As her shift progressed, claimant's left shoulder became more painful. At approximately 9:30 p.m., she reported her complaints to Yolanda Johnson, the charge nurse on duty, and Donna Rovenshine, the house supervisor. According to claimant, she told them that she wasn't entirely sure how she had hurt her shoulder but that it was likely while lifting a resident on January 30, 2003, and that she had last lifted a patient between 4 and 5 p.m. on that date. She even speculated that it might have happened while lifting one particular resident.

Ms. Rovenshine completed an accident report and referred claimant to the emergency room at Providence Medical Center. Thereafter, she was referred to an occupational facility for further treatment. At some point, respondent terminated claimant's medical treatment and as a result, the matter was scheduled for a preliminary hearing. Neither party disputes the Board's authority to address this dispute.

The ALJ concluded "[c]laimant is determined tentatively to have sustained a compensable shoulder injury moving a resident during her employment. Claimant should be referred to Orthopaedic Professional Association for an examination and report as to her injury and treatment needs if any."

After reviewing the transcript from the preliminary hearing as well as the exhibits offered during that proceeding and the parties' briefs submitted on appeal, the Board finds no reason to set aside the ALJ's Order.

The evidence, when taken as a whole, more than adequately sets forth an accidental injury occurred on January 30, 2003, while claimant was in respondent's employ. There is no evidence that even remotely suggests claimant injured her left shoulder in any other way than at work.

Likewise, the claimant provided timely notice as required by K.S.A. 44-520 (Furse 2000). Claimant alleges an injury on January 30, 2003. On February 1, 2003, she told her supervisor and head nurse what work activities she believed might have caused her left shoulder pain. Claimant was apparently specific enough to compel respondent to send her to the emergency room and to fill out an accident report on February 1, 2003.

Even if she failed to sufficiently provide notice on that date, the statute allows an injured employee a full 10 days to provide notice under K.S.A. 44-520 (Furse 2000). Pursuant to statute, this 10-day period excludes intermediate Saturdays, Sundays and legal holidays.¹ In this instance, claimant discussed the claim with respondent's agent who was investigating the claim on February 11, 2003. On that date, she provided a great deal of specificity as to her injury, or at least what she believed to have caused her injury. February 11, 2003, falls within the 10-day period set forth in the statute. Thus, notice was established.

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Robert H. Foerschler dated September 26, 2003, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of November, 2003.

BOARD MEMBER

c: Donald T. Taylor, Attorney for Claimant
Kathleen N. Wohlgemuth, Attorney for Respondent and its Insurance Carrier
Robert H. Foerschler, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

¹ K.S.A. 2002 Supp. 44-551(b)(1).